

GAHC010208892021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6776/2021

NABANITA DAS
D/O LATE NABIN CH. DAS
RESIDENT OF BAKHARAPARA II
WARD NO. 20 PO , PS AND DIST BONGAIGAON, ASSAM 783380

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, GENERAL ADMINISTRATION DEPARTMENT, DISPUR
GUWAHATI 06, ASSAM

2:THE DEPUTY COMMISSIONER

BONGAIGAON DISTRICT ASSAM
783380

3:THE DISTRICT LEVEL COMMITTEE (DLC) BONGAIGAON

REPRESENTED BY ITS CHAIRMAN
DIST BONGAIGAON ASSAM 783380

4:THE CIRCLE OFFICER.
BONGAIGAON REVENUE CIRCLE
BONGAIGAON
ASSAM 78338

Advocate for the Petitioner : MS. D GHOSH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

19/07/2023

Heard Mr. I. Chakma, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned Additional Senior Government Advocate appearing for the respondents.

2. This writ petition is filed by the petitioner, Nabanita Das, who is aggrieved by the rejection of her prayer for consideration for appointment under the compassionate scheme.

3. The application filed by the petitioner came to be placed before the District Level Committee for consideration for appointment on compassionate ground. The District Level Committee for the District of Bongaigaon by their meeting held on 03.01.2019 rejected the case of the petitioner on the ground that she did not have the requisite qualification for being considered in the Grade III posts. By the said meeting held on 03.01.2019, the case of the petitioner was accordingly rejected and not forwarded to the State Level Committee.

4. Learned counsel for the petitioner submits that the petitioner's father was employed as a Supervisor Kananga in the office of the Bongaigaon Revenue Circle, Bongaigaon District. During his service tenure, the father of the petitioner expired on 02.02.2016. Since the father of the petitioner was the sole earning member of the family, the petitioner being eligible for being considered for appointment on compassionate ground she filed application before the authorities praying for appointment under the compassionate scheme. In her

application which was filed before the authorities concerned, there was no mention that she had applied for appointment under any Grade III post under the concerned department. The application was otherwise supported by all necessary documents. It is submitted that the petitioner completed her Higher Secondary under the Assam Higher Secondary Education Council in the year 2016 and which was sufficient qualification for being considered for at least a Grade-IV post. The District Level Committee however, by its meeting held on 03.01.2019 rejected the case of the petitioner on the ground that she did not have the adequate qualification for being appointed in Grade III posts.

5. Learned counsel for the petitioner submits that the District Level Committee did not consider the case of the petitioner in respect of other available vacancies including Grade IV post for which she had the requisite educational qualification. That not having been done, the same is contrary to the procedure prescribed under the Office Memorandum dated 01.06.2015 issued by the Government of Assam, Department of Personnel, Personnel (B). As such the impugned minutes be set aside and the District Level Committee be directed to reconsider the case of the petitioner in terms of the Office Memorandum dated 01.06.2015.

6. Mr. T. C. Chutia, learned Additional Senior Government Advocate appearing for the respondents submits that depending on the level of her qualification, she was considered for the Grade III post but the requisite qualification for a Grade III post is a Graduate and as such the DLC had rightly rejected the case of the petitioner as she was not eligible for being considered under the compassionate scheme.

7. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The impugned order dated 03.01.2019 is also

been carefully perused.

8. From the minutes, it is seen that the petitioner's case was considered only in respect of Grade III posts and the same was rejected as it was found that she did not have the requisite educational qualifications. Perusal of her application available in the writ petition shows that the application preferred by the petitioner seeking compassionate appointment did not reflect that she wanted to be considered only for Grade III post. It is also not in dispute that she had completed her Higher Secondary under the Assam Higher Secondary Education Council. It is further not in dispute that she has more than the requisite qualification as specified for being considered against Grade IV posts.

9. Upon a careful perusal of the Office Memorandum dated 01.06.2015, it is seen that there is no bar on the authorities to consider the cases of the applicants in respect of all available vacancies including Grade IV posts. The minutes dated 03.01.2019 does not reveal as to why the case of the petitioner was not considered in respect of Grade IV posts although she had more than the requisite qualification for being considered for any Grade IV posts. The minutes of the meeting does not reflect why the petitioner was considered only for appointment under Grade III posts when her application stated to have been filed by the petitioner did not specifically mention that she had applied for appointment under compassionate scheme only for any Grade III posts.

10. Having considered the submissions made by the learned counsels and upon due consideration of the provisions of the Office Memorandum dated 01.06.2015, this Court is of the view that the District Level Committee ought to have considered the case of the petitioner against all available vacancies including a Grade IV vacancy, if available. The District Level Committee ought not to have rejected the petitioner by considering her case only in respect of

Grade III posts as had been done. Clause 15 of the Office Memorandum provides that if sufficient vacancies are not available in any particular post to accommodate any person, then it is open to the Administrative Department to take up the matter in other departments to provide an early appointment on compassionate grounds for those in the waiting list. As such the competent authorities are empowered under the Office Memorandum dated 01.06.2015 to examine in detail the cases of each applicant in respect of the vacancies available in that department or in other departments and then recommend their cases if they fulfil the requisite qualifications and other requirements for due consideration for appointment under the compassionate scheme. In that view of the matter the impugned findings of the District Level Committee vide its minutes dated 03.01.2019 in so far as the petitioner is concerned is hereby interfered with and set aside. Matter is now remanded back to the District Level Committee to reconsider the case of the petitioner in the light of the directions given herein above read with the Clauses of the Office memorandum dated 01.06.2015 for passing necessary orders. If there are available vacancies for considering the case of the petitioner in any Grade IV post, then the District Level Committee will pass necessary orders for due recommendation for consideration of the case for appointment under the compassionate ground of the petitioner. The District Level Committee while considering the case of the petitioner will take note of all the relevant clauses mentioned in the Office Memorandum dated 01.06.2015 including Clause No.15 as discussed herein above.

11. In terms of the above, the writ petition is allowed and disposed of. No order as to cost.

12. The directions contained in the writ petition shall be carried out within

a period of 60 days from the date of receipt of certified copy of this order.

JUDGE

Comparing Assistant